



Public Law Project

CHANGES TO JUDICIAL REVIEW: UNDERMINING CITIZENS' ABILITY TO HOLD GOVERNMENT TO ACCOUNT

CIVIL SOCIETY BRIEFING PAPER PART 4 CRIMINAL JUSTICE AND COURTS BILL MARCH 2014

The Government has introduced a Bill designed to make it harder for individuals and civil society groups to bring claims for judicial review. The effect of the Bill will be to undermine Governmental accountability and transparency, and to insulate public bodies from scrutiny. It is deeply undemocratic. Anyone, whatever their political allegiance or their cause, should be gravely concerned by this self-interested attempt to limit citizens' access to the court.

The Bill is currently going through the Committee Stage in the House of Commons. It is vital that the Bill is amended so as to maintain the UK's proud tradition of enabling citizens to challenge unlawful Government action in the courts.

Judicial review is a vital tool to hold public bodies to account

Judicial review is the legal mechanism by which unfair and unlawful decisions made by public bodies can be challenged. Claims can be brought by individuals or groups who are affected by the decision. Examples of the kinds of decisions that may be subject to judicial review include:

- Decisions by local authorities to close down libraries, hospitals, care homes, advice centres or disabled people's services;
- Decisions by the Department of Health to limit the availability of particular types of medical treatment, such as new cancer drugs;
- Decisions by the police or CPS not to investigate or prosecute allegations of domestic abuse, sexual assault or forced marriage;
- Decisions by the Department of Transport to build roads or railway lines across parks, gardens and countryside.

Challenges to these decisions may arise because a public body has failed to act within its legal powers, has followed the wrong procedure or otherwise acted unfairly or unreasonably. The purpose of judicial review is to prevent government and other public bodies from acting unlawfully. Its primary concern is not individual rights, but the maintenance of the rule of law. Claims may be brought in the public interest by civil society groups such as charities or community groups who may advocate on behalf of disabled people, or the elderly, or for the protection of an area of outstanding natural beauty. Where they have particular expertise, and only where the court agrees their involvement would help, such groups can also 'intervene' in cases to help provide the information necessary for the court to make the best decision.

Part 4 of the Criminal Justice and Courts Bill will make it difficult for civil society organisations and individuals to access judicial review, allowing unlawful and unfair government action to go unchallenged

The effect of Part 4 of the Bill will be to make it much harder for individuals and groups to bring judicial reviews, regardless of the strength of their case or the importance of what is at stake. The Bill proposes to:

- Make it much more difficult for charities, NGO's individuals and campaign groups to bring important judicial reviews by significantly increasing the financial risk to which they would be exposed. This means that such claimants would risk being hit with a bill worth tens of thousands of pounds if they lose the case, no matter how important the issue, or how reasonably they had acted. In many cases, this risk will prevent cases from being brought in the first place, no matter how strong or important they are.
- Deter NGOs and charities from taking part in judicial reviews that raise issues of wide public importance and impact on the lives of their members or beneficiaries. Such organisations will be forced to pay some of the legal costs of the other parties, regardless of the importance of the issue at stake or the value the organisation would add. Again, in many cases, this change will simply prevent interventions, no matter how much they may assist the court.
- Enable public bodies to go unchallenged where they can persuade a court that, despite having made a decision unlawfully or unfairly, it is highly likely that they would have come to the same decision had they acted lawfully. This will allow public bodies to 'get away with' unfairness even where the outcome might have been different had it acted fairly. It will undermine good decision-making.
- Allow the Government to define what is in the public interest, rather than allowing the independent courts to consider whether the lawfulness of an issue needs to be determined. This could mean that where the Government is involved in litigation, it will be able to argue that it is not in the public interest for its decision to be scrutinised, regardless of the importance of the issue, how many people are affected by it, or how unfair it is.

What you can do to stop the Bill from undermining judicial review

1. **Write to your MP.** It is vital that MPs realise what the Government is trying to do to judicial review. Write to your representative and urge them to challenge the Bill. Explain to your MP why judicial review matters.
2. **Tell your members.** It is important that everyone understands that the Government is trying to prevent individuals, civil society and the courts from scrutinising and challenging the action it takes. Encourage your members to think about the times when they have been affected by the actions of a public body, whether it is a health service provider, school or transport service, and the importance of preserving their rights to hold such bodies to account.
3. **Disseminate this briefing using social media and ask organisations such as 38 Degrees to take up the campaign.** This is not a niche legal issue: it goes to the heart of the balance of power between citizens and the state.

PLP can provide you with a more detailed briefing paper, the text of a draft letter to your MP and/or with the proposed text of necessary amendments to the Bill.

For more information including the draft documents above, please visit our website at www.publiclawproject.org.uk

Alternatively you can contact Jo Hickman on j.hickman@publiclawproject.org.uk or Martha Spurrier on m.spurrier@publiclawproject.org.uk.